UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60573-CIV-MORENO

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MUTUAL BENEFITS CORP., et al.,

Defendants,

VIATICAL BENEFACTORS, LLC, et al.,

Relief Defendants.
_____/

RECEIVER'S FINAL OMNIBUS REPORT ON CLAIMS AND MOTION FOR FINAL DETERMINATION OF ALLOWED CLAIMS

Roberto Martínez, as the court-appointed receiver ("Receiver") of Mutual Benefits Corp. ("MBC"), Viatical Benefactors, LLC ("VBLLC"), Viatical Services, Inc. ("VSI"), and Anthony Livoti, Jr. and Anthony Livoti, Jr., P.A. solely in their capacity as trustee, hereby files this Omnibus Report to advise the Court regarding the final results of the Claims Process, to advise the Court of the claims that remain in dispute and the Receiver's position on such claims, and to request the Court's final determination of the claims to be allowed in this Receivership. The Court has scheduled a hearing on these matters for **October 21, 2008 at 2:00 p.m.**

AN OVERVIEW OF THE CLAIMS PROCESS

On April 3, 2008, the Court entered its Order Authorizing Claims Process [D.E. 2058]. The Receiver subsequently sent out 49,127 Claim Forms to every MBC investor whose policy had not yet matured, as well as to other potential claimants and creditors. One Claim Form was sent out for each "policy interest," so some investors received and filled out multiple Claim Forms. The deadline for returning the Claim Forms was July 22, 2008. A total of 36,922 Claim Forms were ultimately returned. The Receiver continued to accept Claim Forms that trickled in after the deadline, and so will not be objecting to any Claim Forms on lateness grounds.

On each Claim Form, the Receiver pre-printed the dollar amount of the investor's investment with MBC. The Claim Form indicated that the Receiver intended to recommend that amount to the Court as the amount that should be recognized as the investor's claim, but gave the investor an opportunity to disagree with that amount and seek additional or different damages as his or her claim amount. The great majority of the Claim Forms (87.7%) were returned without any objection to the Receiver's recommended claim amount.

If the investment amount is treated by this Court as the allowed claim amount, then all of the returned Claim Forms (including the disputed ones) will represent claims for investor damages totaling $774,303,002.

4,527 Claim Forms were ultimately returned with some form of disagreement with the recommended claim amount or a request for additional or different damages. The Receiver's professionals and the staff at VSI worked diligently to minimize the number of Claim Forms that would be objected to by working directly with the investors to resolve issues with numerous deficient Claim Forms that were returned (e.g., unsigned forms, illegible handwriting, no box checked).

The disagreements fall into seven general categories: (1) claims for investment return; (2) claims for delay/interest/lost time value of money; (3) claims for premiums and/or administrative fees paid; (4) claims for "consequential damages"; (5) claims with multiple of the above disputes; (6) claims where the basis for the dispute is unstated; and (7) trade creditors. Each will be discussed in detail below.

As required by the Order Authorizing Claims Process [D.E. 2058], the Receiver sent an "Objection Notice" to each of the claimants who disputed the Receiver's recommendation, and certain other investors and claimants, stating that the Receiver objects to their claim in part or in whole, providing a short description of the basis for the Receiver's objection, and reiterating the amount the Receiver would recommend as the claim amount. Pursuant to the Order Approving Claims Process, the recipients of the Receiver's Objection Notices had until September 22, 2008 to respond to the Receiver's objection by stating their position. The Order Approving Claims Process provided: "Any investor or claimant who does not respond to the Omnibus Claims Objection Notice shall be deemed to have waived their challenge to the objection and consented to the amount of their claim proposed by the Receiver." Order Authorizing Claims Process at ¶ 5. The Objection Notices also clearly stated this.

Out of the 4,534 Objection Notices sent out by the Receiver, only 686 investor claimants responded indicating that they maintained their position and wished to preserve their dispute. 58 claimants responded to the Objection Notices by withdrawing their dispute in one way or another and agreed with the Receiver's recommendation. Thus, at the end of the Claims Process, 98% of the investor claimants can be considered as undisputed claims for the dollar amount invested.

A chart summarizing the results of the Claims Process follows:

Receivership Claims Process Summary

Total # of Claim Forms Sent Out:	49,127
Total # of Claims Forms Returned:	36,922
Objection Notices Sent by Receiver:	4,527
Objection Notices Returned by Claimants w/ Continued Dispute:	686

Summary of Disputed Claims:

	Objection Notices Returned	Claim Forms Returned
Claims Investment Return	**162**	**1,623**
Claims Delay/Interest/Lost Time	**42**	**206**
Claims Premiums/Admin. Fees Expended	**129**	**1,118**
Multiple Above Disputes	**339**	**1,365**
Claim is Unstated/Unexplained	**14**	**145**
Claims Consequential Damages	**0**	**62**
Other Misc. Disputes	**0**	**8**
Totals:	**686**	**4,527**

The returned Objection Notices are being filed with the Court, by category, under separate cover. It should be noted that this count may not be a perfect tally of what the investors intended in their Claim Forms and returned Objection Notices. Some Claim Forms and returned Objection Notices were difficult to understand, so the Receiver's staff had to try to interpret the basis for the

investor's objection. The Receiver also has some concern about the relatively low number of responses to the Objection Notices from the investors, which may be in part due to the fact that many investors are in foreign countries, lack sophistication, or other factors.[1] The Receiver has continued to accept responses after the September 22 deadline up until the filing of this motion, and so has not disregarded any responses as untimely. However, this should be a largely moot concern, because all of the disputes fall into a relatively small number of categories. So, each of the relevant "categories" of disputes has been preserved for the Court to consider.

THE APPLICABLE LEGAL STANDARDS

This is an equity receivership resulting from an SEC enforcement action. In such cases, the courts have consistently indicated that the district court has very broad powers and wide discretion to fashion remedies and determine to whom and how the assets of the Receivership Estate will be distributed. *See SEC v. Elliot*, 953 F.2d 1560, 1566 (11th Cir. 1992); *see also SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). When it comes to fashioning a claims process and related distribution plan, "[n]o specific distribution scheme is mandated so long as the distribution is 'fair and equitable.'" *SEC v. P.B. Ventures*, 1991 WL 269982, at *2 (E.D. Pa. 1991). Similarly, in deciding what claims should be recognized and in what amounts, "the fundamental principle which emerges from case law is that any distribution should be done equitably and fairly, with similarly situated investors or customers treated alike." *SEC v. Credit Bancorp. Ltd.*, 2000 WL 1752979, at *13 (S.D.N.Y. 2000). Since any one group of investors in a Ponzi-type scheme generally occupies the same legal position as other investors, equity should not permit one group a

[1] Two Objection Notices, sent to the same investor in Japan, were returned as undeliverable, and VSI was not able to find an alternate valid address. All other Objection Notices that were originally returned as undeliverable were able to be delivered by contacting the investor and finding a correct address.

preference over another, because "equality is equity." *See Elliot*, 953 F.2d at 1570. The Receiver has taken the below positions with these standards in mind.

THE RECEIVER'S POSITION ON THE DISPUTED CLAIMS

The Receiver has recommended the allowed amount for each investor's claim be the total dollar amount of their initial investment(s) with MBC – in other words, the "dollars invested" or "dollars in" approach. This is the most equitable and practical basis for determining investors' claims in this Receivership. It is also the most common and most generally recognized approach to treatment of investor claims in an equitable receivership or bankruptcy proceeding involving a fraudulent investment scheme. *See, e.g., CFTC v. Equity Financial Group, LLC*, 2005 WL 2143975, at *22-*23 (D.N.J. Sept. 2, 2005) (adopting Receiver's recommendation that "claims be recognized only for actual dollar amounts invested"); *In re Tedlock Cattle Co.*, 552 F.2d 1351, 1353-54 (9th Cir. 1977) (approving bankruptcy trustee's use of a "cash-in-cash-out plan" in distributing the assets to investor-creditors in a Ponzi investment scheme); *Capital Consultants*, 2002 WL 32502450, at *3 ("I find that the Receiver's proposed money-in/money-out pro rata approach is an equitable one and I adopt it.").[2]

The Receiver believes that both investors who ended up on policies that were voted to be sold ("Selling Investors") and those who ended up on policies that were voted to be kept ("Keeping Investors") should be allowed claims for this amount. Both Selling Investors and Keeping Investors were equally the victims of wrongful conduct when they invested with MBC. They were sold an unregistered security in violation of the federal securities laws, and they were the victims of a

[2] For MBC's claimant investors, there was no "money out" in the traditional sense, as there is in many Ponzi schemes where earlier investors in time get supposed "profits" or "partial returns" on their investments. For MBC's claimant investors, it was all "money in." The only exceptions were those investors who have had their policies mature, who have received all of their "money out" plus some, and so are not part of this Claims Process.

fraudulent scheme in which, among other things, misrepresentations were made about MBC's determination of "life expectancies" for the policies, the safety and "certainty" of the investment, and the "escrowing" of investor funds to pay the premiums on policies. Whether the investors ultimately chose to vote to keep their policy or sell their policy does not alter the fact that they were equally the victims of unlawful conduct.

THE DISPUTED INVESTOR CLAIMS.

The following is a description of the six general categories of investor claims for additional or different amounts than the "dollars invested," along with the Receiver's reasons for objecting to such additional amounts. To be clear, the Receiver does not object to any of the investors with the below dispute having an allowed claim for the full amount of their "dollars invested" and affirmatively recommends that amount; the dispute is limited only to the additional damages claimed by the investors.

1. Claims for Investment Return.

These are claims where the investors have sought the amount they expected to earn on their investment with MBC in addition to the amount they invested. For example, if the investor was told by MBC that he or she was "guaranteed" a return of 36% on the investment, the investor has asked for their investment amount plus the 36% return.

162 claimants have responded to the Objection Notices by specifically preserving this dispute. (A number of claimants also submitted responses to the Receiver's Objection Notices preserving "multiple disputes", including in many cases claims for investment return, as noted below.) The Receiver objects to these additional claimed damages. It was an integral part of the MBC fraud that life expectancies were not determined as represented, that the life expectancies were not accurate, and that the investors were lied to about this. The promised investment return was

entirely a product of the life expectancy assigned to the policy. The shorter the life expectancy, the lower the return: the longer the life expectancy, the higher the return. Given that these promised returns were the product of fraud, and often apparently arbitrarily assigned, it would be inequitable to treat these promised "profits" as part of the allowed claim. Not surprisingly, claims for "profits" in Ponzi-scheme receiverships are generally rejected by the courts. *See, e.g., Equity Financial*, 2005 WL 2143975, at *22-*23 (holding that "recognizing profits or other earnings in claims for distributions [in a CFTC receivership] would be to the detriment of later investors and would therefore be inequitable"); *SEC v. Credit Bancorp. Ltd.*, 2000 WL 1752979, at *40 (S.D.N.Y. 2000) ("[R]ecognizing claims to profits from an illegal financial scheme is contrary to public policy because it serves to legitimate the scheme.").

It is also worth noting that, if every investor's promised "investment return" was included as part of the claim in addition to the amount of his or her "dollars invested," it would not necessarily change significantly the amount of an investor's ultimate distribution in this Receivership. Every investor's claim amount would increase, but the pool of money available for distribution would not change, so the investors' *pro rata* distribution would not necessarily change at the end of the day.

2. Claims for Delay/Interest/Lost Time Value of Money.

These are claims where the investors have sought damages for the delay in their policies maturing "on time" in the form of interest or some other form of opportunity cost. In other words, if they were told that their policy had a "life expectancy" of 24 months, and that "life expectancy" has long since come and gone without the policy "maturing," the investor has claimed damages for the delay in getting their money back or the interest they could have earned if they had invested their money elsewhere.

42 claimants have responded to the Objection Notices by specifically maintaining this dispute

(and the dispute is preserved by many of the "multiple dispute" claimants as well). The Receiver objects to these additional claimed damages. As with the claims for investment return, these claims are premised on the life expectancies assigned to the policies. The more time that has passed since the "life expectancy" expired, the higher the claim for lost interest or delay. But again, it would be inequitable and contrary to the case law to recognize claims based on the fraudulent representations made in a Ponzi-type scheme. Moreover, even if the business of MBC had been conducted lawfully, the investors had no guarantee that an investment in any particular policy would mature at the time projected in the life expectancy estimate; the true opportunity cost, on an individual basis, is thus impossible to accurately quantify.

In addition, it would be extremely complicated to calculate this sort of claim. For each investment interest – and there are 36,922 represented in this Claims Process – the Receiver's accountants would have to calculate (a) the date the policy was "supposed to" mature according to MBC, (b) the time that has transpired since that date to the present, and (c) the interest (at some agreed upon rate) that would have been earned in the interim. That is not necessarily a difficult calculation for a single investor. Multiply that process by 36,922 investment interests though, and the calculations would become very expensive and time consuming to do.

3. Claims for Premiums Paid and/or Administrative Fees Paid.

These are claims made by Keeping Investors where the investor has sought to recover the administrative fees and/or the premiums that they have had to pay on their "Keep Policies" to keep them in force since the Disposition Process for all of the polices was concluded.

129 claimants have submitted claims for the amounts that they have had to pay in premiums on their "Keep Policies" since the conclusion of the Disposition Process and/or the amounts they have paid to VSI as administrative fees, as additional damages to the amounts they invested. The

Receiver objects to these amounts being included in the allowed claim amount. In the Disposition Process, the investors were given an opportunity to vote on how to mitigate their losses by selling the policy, keeping the policy or allowing the policy to lapse. By opting to attempt to mitigate their losses by voting to keep the policy, the investor specifically agreed to take on the administrative expense and shared premium burden for the policy going forward. Accordingly, such expenses should not be considered part of the investor's losses from MBC's fraudulent conduct; they are a burden and risk the investor agreed to assume and was not required to assume. In addition, it is worth noting that even MBC cautioned investors in its offering materials that they could eventually be required to pay the premiums for policies that exceeded their life expectancy and that exhausted their supposed "premium reserves." Notably, the Receiver continued to pay the premiums on all Keep Policies through their MBC-assigned life expectancies.

4. Multiple Disputes.

These are claims where the investor raised more than one of the above grounds as the basis for their disagreement. 339 claimants have submitted responses to the Receiver's Objection Notices preserving multiple of the above disputes. Most often, both a claim for investment return and a claim for lost interest was raised. However the Court resolves the individual issues set forth above should control the resolution of these claims as well.

5. Claims are Unstated or Unexplained or Non-Responsive.

These are claims where the investor indicated, by checking a box on the original Claim Form, that they did not agree with the Receiver's recommended amount, but did not give an explanation of why or indicate what amount they did seek in damages. The Receiver sent an Objection Notice explaining this defect. 14 claimants subsequently responded to the Receiver's Objection Notices by indicating they wanted to maintain their dispute, but still did not state what their dispute is or wrote a

statement that was not responsive to the issue of what they disputed about their claim (e.g., particular questions about their policy interests, general statements of displeasure with the situation). In short, without any description of what their dispute is, there is no practical way to grant it.

6. Claims for "Consequential Damages".

These are claims where the investor originally sought some form of consequential damages as a result of their investment with MBC. For example, some investors claimed they had to hire an attorney or other professional to help them with their issues and want to be reimbursed for those costs. Others have claimed consequential damages such as pain and suffering due to their lost investments and imperiled retirements. No claimants have responded to the Objection Notices by specifically preserving this objection. In any event, recognizing these claims would not be practicable or equitable. These types of claims are very difficult to verify, both as to whether they exist at all and as to their proper amount. They would also potentially lead to inequitable results because (a) different investors made different personal choices (e.g., the hiring of an attorney) in dealing with the MBC fraud, and (b) different investors would have different potential claims for consequential damages that could greatly increase their claim amount vis-à-vis other investors.

7. Miscellaneous Issues

a. ***Confusion Over Multiple Claim Forms*:** The Receiver sent out a separate Claim Form for each policy interest held by an investor. As a result, investors who had interests in more than one policy received multiple Claim Forms. Some investors even hold interests on a single policy under more than one name (e.g., individually and in the name of a retirement account or a trust), and so received more than one Claim Form for an investment on a single policy. Although the Claim Forms clearly described this issue, this nonetheless led to confusion by investors in a number of cases. For example, an investor who had invested a total of $15,000 that was placed as $10,000

on one policy and $5,000 on another policy would have received two separate Claim Forms for each policy interest. If the investor disregarded or did not notice the second Claim Form, they would send in a single Claim Form disputing the amount of $10,000 as their "dollars invested" and stating that they should have a claim for $15,000. Instead of objecting to the Claim Form (which was technically not correct), and thus potentially creating additional confusion, the Receiver has instead simply treated the investor as having made a claim for $10,000 on one policy and $5,000 on the other with a total claim of $15,000. The net result is the same.

b. ***Estate of Sally G. Richardson (Claim Nos. 3004078, 3007764, 3036501, 3043771, 3046281)***: During the investor-to-investor sales process, this investor signed an irrevocable offer to sell her interest in a particular policy to other investors on that same policy. Consistent with the rules set forth in the process, another investor on the same policy made a proper bid to purchase that interest and tendered the funds to buy the interest. Accordingly, the sale of that interest was complete. By error, however, the death benefit proceeds in the amount of $44,735.35 for the selling investor's interest were nonetheless sent from the insurance company to the selling investor, when they should have been sent to the buying investor who now owned the interest. The Receiver sent letters to the selling investor notifying her of the error and demanding the return of the funds, which the selling investor failed to respond to. The selling investor has, however, submitted claims on 5 other policy interests in the Claims Process. The total amount of these claims is $129,974. The Receiver recommends that the selling investors' claims be denied, and that any amount the selling investor would receive instead be transferred to the buying investor who should have received the $44,735.35 in death benefits. There does not appear to be any scenario in which the amount the selling investor would have actually received on her claims will exceed the $44,735.35 amount. Accordingly, all of the selling investor's claims should be transferred as partial satisfaction.

B. THE TRADE CREDITOR CLAIMS.

MBC had 220 potential trade creditors (170 business entities and 50 former sales agents) of which the Receiver was aware. These ranged from former MBC sales agents, to vendors who had supplied goods or services to MBC prior to the Receivership but had not been paid, to lawyers and other professionals who claimed to be owed fees. Of those 220, only 16 trade creditors initially returned Claim Forms indicating they wanted to make a claim in this Receivership. The Receiver sent Objection Notices to all of the trade creditors indicating that the Receiver may object to their claims on the grounds discussed below.

Only 6 of the trade creditors responded by indicating they wished to preserve their claims despite the Receiver's objection. These 6 claims are from two law firms (Holland & Knight LLP, Friedlob Sanderson et al.), two lobbying firms (Aaron Read & Associates, Conkling Fiskum & McCormick, Inc.), and two printing/design businesses (Franklin Trade Graphics, Create One For Me). All are ordinary trade creditors and do not have secured claims. Their claims total $575,089.28. Pursuant to the terms of the Order Authorizing Claims Process, the claims of the non-responding trade creditors should now be considered waived. *See* Order Authorizing Claims Process at ¶ 5. A chart setting forth both the preserved and waived trade creditor claims is attached as Exhibit A.

The Receiver objects to all of the trade creditor claims. The amounts available for distribution in this Receivership are, not surprisingly, far short of the amounts that would be required to fully compensate the defrauded investors. There are approximately $774 million in claims for investor damages, based on the "dollars invested" approach. The amounts available for distribution to the investor claimants will only be a small fraction of this. In other words, the investor claimants will not even come close to being fully compensated for their damages.

In an equity receivership such as this, the district court has broad powers and wide discretion in determining equitable distributions. *See, e.g., SEC v. Fischbach,* 133 F.3d 170, 175 (2d Cir. 1997) ("The crafting of a remedy for violations of the 1934 Act lies within the district court's broad equitable discretion."); *SEC v. Safety Fin. Serv., Inc.,* 674 F.2d 368, 372-73 (5th Cir.1982) ("It is a recognized principle of law that the district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership."). This is a case in which trade creditor claims should either be rejected or be subordinated to the investors' claims – the net effect of which will be the same. If the trade creditors' claims are put "second in line" to the investor claims, the net effect will be that the trade creditors recover nothing, as there will not be enough to pay the investors in full.

The trade creditor claims should be rejected and/or subordinated for several reasons. First, this Receivership springs from an SEC enforcement action brought as the result of a fraud perpetrated on the investors and was intended to protect and benefit the investors, among other things. Second, MBC's fraudulent conduct was directed towards its investors – not the trade creditors with whom it did business. MBC was a lucrative business as a result of the extraordinary amount of money it obtained from investors and had ample funds to pay – and did pay – the vast majority of its trade creditors. In fact, each of the six trade creditors at issue were paid substantial amounts (and in some cases very substantial amounts) by MBC prior to the Receivership: (1) Holland & Knight was paid $2,658,372.74, (2) Friedlob Sanderson was paid $226,343.11, (3) Aaron Read & Associates was paid $47,5000, (4) Conkling Fiskum & McCormick was paid $8,009.87, (5) Franklin Graphics was paid $1,217,464.65, and (6) Create One For Me was paid $125,601.05. Third, as between the trade creditors and the victim investors, the investors as a whole are less able to bear the financial costs of MBC's conduct than are commercial businesses.

The Receiver also objects to the preserved trade creditor claims by the four professional services firms: Aaron Read & Associates, LLC, Conkling Fiskum & McCormick, Inc., Friedlob Sanderson Paulson & Tourtillot, LLC, and Holland & Knight LLP. Each of these firms rendered either lobbying/governmental relations services or legal services to MBC prior to the May 4, 2004 Receivership. These services helped, in one way or another, to keep MBC in business, which in turn prolonged its ability perpetrate a fraud against the investors. To be clear, the Receiver does not allege that these professionals aided and abetted MBC's fraudulent conduct. Rather, the Receiver simply contends that their professional services helped to keep MBC in business – a business which turned out to be fraudulent and which deepened its liability to investors every day that it continued to function. In fashioning an equitable claims process, this one of many things for the Court to take into account in fashioning an equitable claims process and distribution plan.

Finally, it should be noted that, even if trade creditor claims are allowed by the Court, there are limitations on which "pools" of assets currently held by the Receiver may be looked to in connection with such claims. The funds currently maintained by the Receiver that resulted from the disgorgement and civil penalties paid by the Defendants in the SEC action are limited to distribution solely to the victim investors (and not creditors). *See, e.g.*, 15 U.S.C. § 7246. Similarly, funds obtained through the MBC Investors Class Action, and now maintained by the Receiver, were realized as the result of claims brought solely on behalf of defrauded investors. This is an issue that will, if necessary, be addressed in the Receiver's proposed plan of distribution of the Receivership Estate.

The Receiver also raises the following specific objections to the claims submitted by certain of the trade creditors:

1. ***Holland & Knight (Claim No. 3049061)***: The law firm of Holland & Knight

("H&K") makes a claim for $400,814.84 in legal fees it claims to be owed for legal services provided to MBC. Notably, of that amount, $274,926.50 relates to work that Holland & Knight performed post-Receivership in opposing the SEC's action against MBC and its former principles. H&K is thus making the claim that it is entitled to diminish the assets of the Receivership Estate – and thus the assets available to distribution investors – for its work in opposing the relief and remedies that were sought and obtained by the SEC to protect the investors. H&K did no work that benefited the Receivership Estate after May 4, 2004. To the contrary, H&K's work sought to advance the position of the former principals of MBC, Joel and Leslie Steinger, whose interests were adverse to those of the Receivership Estate and the investors. H&K advocated the position that the viatical settlement contracts sold by MBC were not securities – a position that was rejected by this Court and the Eleventh Circuit and that would have left MBC's investors without any protection from the federal securities laws. H&K also advocated the position that no preliminary injunction or receivership should be entered against the Defendants – also a position that was rejected by this Court and would have left MBC's investors back in the hands of Joel and Leslie Steinger. H&K was certainly entitled to advocate these positions on behalf of its clients, but it should not be permitted to seek payment for this work out of funds that should be distributed for the benefit of the investors defrauded by their clients. Regardless of how H&K's claim for pre-Receivership fees is handled, these post-Receivership fees should be rejected.

2. ***Aaron Read & Associates, LLC (Claim No. 3048058).*** Aaron Read & Associates is a California lobbying firm that has made a claim for $5,000 as an unpaid retainer for lobbying services for the month of April 2004 (the month immediately preceding the beginning of the Receivership on May 4, 2004). Based on the claim submitted by Aaron Read & Associates, it appears that MBC had entered into a contract to have the firm on retainer for "$5,000.00 a month payable on the first of the

month in arrears." However, the claim does not provide any evidence that any actual services were performed or costs incurred for the month of April 2004. Aaron Read & Associates thus does not appear to be out of pocket any expenses incurred or have spent any time working for MBC for which they have gone unpaid. The Receiver submits that this is further equitable reason to subordinate or deny this trade creditor claim for the benefit of the investor claimants.

3. ***Franklin Trade Graphics (Claim No. 3048110).*** Franklin Trade Graphics has submitted a claim for unpaid fees for printing services for $52,244.89. If the Court decides to allow trade creditor claims in this Receivership, the Receiver objects to $8,990.57 of this claim nonetheless. According to the invoices submitted by this vendor, these are amounts that were charged to MBC's account after the Receivership as "finance charge." It is axiomatic that trade creditors, if they recover at all, should be limited to the amount the entity in Receivership owed at the point the Receivership was put in place. All creditors face a delay in payment of their claims as the Receivership runs its course. Accordingly, the post-Receivership finance charges tacked onto this claim should be rejected.

C. THE "PROBLEM" OF ONGOING MATURITIES.

Additional policies will inevitably mature between the time when the Court rules on the allowable claims and the date when the Receivership Estate is ultimately distributed. This could lead to a problem of unintentional "double dipping" by certain investors in the Claims Process. A certain number of investors will have allowable claims in the Claims Process, but their policies will mature before the distribution of the Receivership Estate. This would lead to inequitable, preferential treatment of such investors if they were to receive both the death benefit on their investment (in other words, a return of all of their "dollars invested" plus their investment return) and a *pro rata* share of the Receivership Estate distribution. Similarly, investors who had matured policies when the Claims

Process began did not receive a Claim Form and do not have a claim. To avoid this "double dipping" problem, the Receiver requests that the Court's order determining the allowable claims also contain a provision that any investor who has a policy mature before the distribution date of the Receivership Estate will have their claim disallowed (since they will be receiving their investment back plus a return in the form of the death benefits on the policy).

THE RECEIVER'S NEXT STEPS

There is now a clear light at the end of this Receivership tunnel. Once the Court rules on the allowable claims, the Receiver will prepare a plan for distribution of the Receivership's assets to submit to the Court for review and approval. There are a limited number of things that the Receiver still needs to accomplish before the Receivership assets are ripe for distribution to all of the claimants. There are a handful of Sell Policies that VSI is still attempting to sell or auction – something that should be accomplished, if sales are possible for these particular policies, within the next couple of months. Most challenging, though, the Receiver is working towards selling VSI to a new owner and operator. Because VSI is still administering approximately 2,700 "Keep Policies", and because many of those policies will likely continue to need to be administered well into the future, VSI will need to continue to function after this Receivership has concluded. The Receiver anticipates realizing some value in the sale of this functioning business to a new operator. Equally as important, an operator that can continue to run the business in a way that will provide the best possible security and protections to the "Keep Investors" going forward will have to be found. This is the primary operational task left for the Receiver to accomplish.

There are also additional litigation recoveries that may be attainable in the relatively near future. Neither Steven K. Steiner nor Leslie Steinger (now deceased) have satisfied the Final Judgments entered against them (or even made good faith efforts to do so). The SEC and the

Receiver are actively pursuing them and their remaining assets. In addition, the MBC Investors Class Action is likely to have additional litigation recoveries that would be distributed through the Receivership.

Given the number of claimants involved in this Receivership, the cost of doing the distribution itself will be substantial and the logistics complicated. As a result, it makes sense to attempt to distribute the entire distributable Receivership Estate at one time – as opposed to planning on subsequent distributions as (and if) additional funds are recovered. However, the Receiver does not intend to delay distribution in any way for speculative or uncertain recoveries. The Receiver's goal, subject to any unexpected difficulty in selling VSI to a suitable buyer, is certainly to have the distribution completed in 2009, and ideally in early 2009.

At present, the Receiver is in custody of approximately $74,000,000 in "asset recoveries" from various sources (e.g., litigation recoveries, disgorgement from MBC's former principals, sale of MBC-owned policy interests). The Receiver is also in custody of approximately $18,000,000 in proceeds from the sale of "Sell Policies" at auction. These amounts are likely to increase somewhat with additional policy and policy interest sales and litigation recoveries.

The Receiver tentatively plans to recommend that all investor claimants recover *pro rata* from the general "asset recoveries" funds, and that "Sell Investors" (and only those investors) recover from the proceeds of the sale of their policies as well. Assuming total claims of about $774,000,000, and assets distributed to all claimants of, at present, about $74,000,000, the amount received on the claims should be roughly 10%. (In other words, for an investor who invested $100,000, they can expect to receive roughly $10,000 through the claims process.) The Sell Investors (who represent about $205,000,000 in claims) will also recover from the $18,000,000 received for the sale of their policies, and so can expect to receive roughly an additional 9% (for a

total of 19%) of their claim.

The precise amounts, of course, are entirely dependent on the final plan of distribution, the final amounts available for distribution, and whether the Court adopts the Receiver's proposals tentatively outlined above. But since investors throughout this Receivership have always been most interested in knowing what compensation they might expect, the Receiver is providing this preliminary estimate at this time.

CONCLUSION

The Receiver respectfully requests that the Court determine that the amount invested be used as the basis for investors claims and adopt the Receiver's position on the disputed claims set forth above. The Receiver will submit a proposed Order at the hearing set for this matter.

Respectfully submitted,

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- and –

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing motion was served via CM/ECF and by electronic mail in accordance with the attached Receiver's Service List on October 14, 2008.

s/ Curtis B. Miner
Curtis B. Miner

SERVICE LIST OF RECEIVER

VIA ELECTRONIC MAIL		
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EXHIBIT A

(Schedule of Trade Creditors)

Trade Creditor Summary

Preserved Objections:

NME #	Creditor's Name	Nature of Claim	Objection Notice Returned	Amount Claimed
3048058	AARON READ & ASSOCIATES, LLC	Lobbying/ Gov't Affairs	Yes	$5,000.00
3048093	CONKLING FISKUM & MCCORMICK, INC.	Lobbying in Oregon	Yes	$8,326.23
3048095	CREATE ONE FOR ME	MBC graphic design services	Yes	$5,310.00
3048110	FRANKLIN TRADE GRAPHICS	Printer of MBC Marketing Materials	Yes	$52,244.89
3048111	FRIEDLOB SANDERSON PAULSON &	Legal Fees	Yes	$104,208.16
3049061	HOLLAND & KNIGHT LLP	Legal Fees	Yes	$400,814.84
				Total = $575,089.28

Waived Objections:

NME #	Creditor's Name	Nature of Claim	Objection Notice Returned	Amount Claimed
3048104	DILWORTH PAXSON PLLC	Legal Fees	No - Waived	$53,011.00
3048133	JAEHNE FINANCIAL,INC	Sales Agent commissions	No - Waived	$4,506.84
3048152	MICROLIANCE	Software Consulting	No - Waived	$4,510.25
3048166	PINECREST SCHOOLS	Joel Steinger contribution pledge	No - Waived	$175,000.00
3048171	PRISM GRAPHIC & DESIGN	Printer of MBC Marketing Materials	No - Waived	$16,183.88
3048178	ROSHKA DEWULF & PATTEN	Legal Fees	No - Waived	$8,115.97
3048190	SQUIRES SANDERS & DEMPSEY	Legal Fees	No - Waived	$28,162.13
3048192	STEWART & IRWIN, P.C.	Legal Fees	No - Waived	$2,376.46
3048211	PATRICIA WALLER	Contract employee	No - Waived	$1,600.00
3048267	JOHN PAUL PAK	MBC Sales Agent	No - Waived	$2,800.00
				Total = $297,081.37